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Filed : December 29, 2003

REMARKS

The foregoing amendments and the following remarks are responsive to the July 11, 2006, Office Action. Claims 1-3, 6-24, and 26-30 were considered by the Examiner. Applicants have canceled Claims 4, 5, 16 and 25. Please enter the amendments and reconsider the claims in view of the following remarks:

Response to Rejection of Claim 10 Under 35 U.S.C. § 112(b)

The Examiner rejected Claim 10 as indefinite under 35 U.S.C. § 112(b). Applicant has amended Claim 10 and believes that it is no longer indefinite as it is clear that a flexible pouch is produced from the preform. Applicant respectfully requests that the Examiner withdraw this rejection.

Rejection of Claims 1, 6-7, 10-13, 16, 18, 19, 22 and 26-28 Under 35 U.S.C. § 103 (a)

In paragraph 5 of the Office action, the Examiner rejected Claims 1, 6-7, 10-13, 16, 18, 19, 22 and 26-28 under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 6,298,638 to Bettel ("Bettel") in view of U.S. Patent No. 4,815,256 to Brown et al. ("Brown"). Applicant submits the following arguments in response to this rejection.

Each of the independent Claims 1 and 22 recite limitations with respect to handling the neck portion throughout the process of blow molding, filling, capping, and placing the pouch in a rigid container, as well as other limitations of particular utility. Claim 10 recites that a handling system that is adapted to convey a preform and a flexible pouch produced from the preform by a neck portion through manufacturing, filling, and packaging systems and releasing the neck portion thereafter. Each of these limitations is not taught or suggested by the combination of Bettel and Brown.

At column 6, lines 9-23, Bettel teaches an apparatus for blowing, sterilizing, capping and filling containers, such as bottles. This is achieved by "continuous positive control . . . by gripping the preform about its neck finish by means of a first set of grippers 30, 31 which cooperate with cams and followers to release each preform only after a second set of grippers 32, 33 has gripper the preform about its neck finish NF." Col. 5, lines 6-12. However, as the Examiner indicates in the *Office Action*, Bettel does not disclose that the handling system discharges the container into a rigid container. Thus, Bettel fails to teach that the handling

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system places the flexible pouches in rigid container and thereafter releases the flexible pouches by the neck finish, as is required by the methods of Claims 1 and 22, and the apparatus of Claim 10.

The Examiner cites Brown as teaching this missing element of Bettle. Specifically, the Examiner found that "Brown teaches a method of handling flexible containers by their neck . . . and subsequently depositing the container in a box (136)."

Brown clearly does not teach or suggest that flexible pouches are deposited in a box and thereafter released from its neck finish. Brown generally describes a liquid dispensing machine that fills containers and dispenses the containers. Brown describes that a gripper means is adapted for gripping a container about its neck portion and subsequently filling and closing the container. However, the container is then released from the gripper means by dropping the container on a "delivery means in the form a of a downwardly sloping delivery chute 136." Bettle further states at col. 13, lines 62-68 that "[d]epending upon the weight of the filled container and the distance of drop from the release point to the chute 127, it may be desirable to include in the delivery means 136 additional overlapping reversed ramps or chutes to ensure controlled and safe delivery of the filler containers to the user dispensing area." As this clearly illustrates that Brown's apparatus drops the container into the delivery means, Brown fails to teach that the handling system places the flexible pouch in a rigid container and thereafter releases the flexible pouch by the next finish.

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). As both Bettle and Brown fail to teach the limitation of placing flexible pouches in a rigid container and thereafter releasing the flexible pouch by its neck finish, Applicants respectfully request that the Examiner withdraw this rejection and pass Claims 1, 10, and 14 to allowance.

Moreover, there is no technological motivation to combine Bettle with Brown. As discussed in Bettle, the preforms and blown containers are under positive control throughout the process of blow molding, sterilizing, filling, and capping. See col. 3, lines 29-42. Bettle discloses that the elimination of non-positive control mechanisms such as "linear conveyors, and transfer mechanisms for them," results in reduced machine jams and increased efficiency of the process. See col. 6, lines 19-23. On the other hand, Brown teaches a method of dropping a

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container into a delivery chute which delivers a filled container to a user dispensing area. Thus, Brown teaches that a method which delivers a filled container to the delivery chute without any positive control of the container. The Examiner has not indicated how a person having ordinary skill in the art would reconcile these fundamental differences between Bettle and Brown to arrive at the claimed invention.

Therefore, Applicants respectfully submit that the Examiner has not established a prima facie case of obviousness because there is no suggestion or motivation in Bettle or Brown to modify Bettle or combine the reference teachings to meet the limitations as recited in amended Claims 1, 10, or 22.

Accordingly, Applicants respectfully submit that Claims 1, 10, and 22 are allowable over the combination of Bettle and Brown. Claims 6-7, 11-13, 18, 19, and 26-28 depend from Claims 1, 10, and 22, and further define the inventions defined in Claims 1, 10, and 22. Thus, Claims 6-7, 11-13, 18, 19, and 26-28 are also patentably distinguished over Bettle and Brown for at least the reasons set forth above with respect to Claims 1, 10, and 22, as well as for other novel and nonobvious features recited therein.

Rejection of Claims 2-3 and 22-24 Under 35 U.S.C. § 103 (a)

In paragraph 7 of the Office action, the Examiner rejected Claims 2-3 and 22-24 under 35 U.S.C. § 103(a) as obvious over Bettle in view of Brown and further in view of U.S. Patent No. 3,818,785 to Wakabayshi et al. ("Wakabayashi"). Each of Claims 2-3 depends from amended Claim 1, and each of Claims 23-24 depends from amended Claim 22. Thus, Claims 2-3 and 23-24 include all the limitations of amended Claim 1 and amended Claim 22, as well as other limitations of particular utility. Applicants submit that amended Claims 1 and 22 includes limitations not disclosed or suggested by the combination of Bettle, Brown and Wakabayshi. For example, Bettle, Brown and Wakabayshi fail to disclose or suggest placing the flexible pouch in a rigid container and thereafter releasing the container from the neck finish as recited by Claims 1 and 22. Thus, Claims 2-3 and 23-24 are also patentably distinguishable over Bettle in view of Brown and further in view of Wakabayshi.

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Rejection of Claims 8-9 and 29-30 Under 35 U.S.C. § 103 (a)

In paragraph 7 of the Office action, the Examiner rejected Claims 8-9 and 29-30 under 35 U.S.C. § 103(a) as obvious over Bettel in view of Brown and further in view of U.S. Patent No. 5,540,879 to Orimoto et al. ("Orimoto"). Each of Claims 8-9 depends from Claim 1, and each of Claims 29-30 depends from Claim 22. Thus, Claims 8-9 and 29-30 include all the limitations of Claim 1 and Claim 22, as well as other limitations of particular utility. Applicants submit that amended Claims 1 and 22 includes limitations not disclosed or suggested by the combination of Bettel, Brown and Orimoto. For example, the combination of Bettel, Brown and Orimoto fail to disclose or suggest placing the flexible pouch in a rigid container and thereafter releasing the container from the neck finish as recited by Claims 1 and 22. Thus, Claims 8-9 and 29-30 are also patentably distinguishable over Bettel in view of Brown and further in view of Orimoto.

Rejection of Claims 14-15 Under 35 U.S.C. § 103 (a)

In paragraph 8 of the Office action, the Examiner rejected Claims 14-15 as being unpatentable under 35 U.S.C. § 103(a) as obvious over Bettel in view of Brown and further in view of U.S. Patent No. 5,462,278 to Valyi. ("Valyi I"). Each of Claims 14-15 depends from Claim 10. Thus, Claims 14-15 include all the limitations of Claim 10, as well as other limitations of particular utility. Applicants submit that amended Claims 14-15 includes limitations not disclosed or suggested by the combination of Bettel, Brown and Valyi I. For example, the combination of Bettel, Brown and Valyi I fail to disclose or suggest that the handling system is adapted to place the flexible pouch in rigid container and thereafter release the flexible pouch by the neck finish, as is recited by independent Claim 10. Thus, Claims 14-15 are also patentably distinguishable over Bettel in view of Brown and further in view of Valyi I.

Rejection of Claims 10, 16 and 17 Under 35 U.S.C. § 103 (a)

In paragraph 9 of the Office action, the Examiner rejected Claims 10, 16, and 17 as being unpatentable over Bettel in view of U.S. Patent No. 4,305,772 to Valyi ("Valyi II").

As noted earlier in this *Response*, Bettel teaches an apparatus for blowing, sterilizing, capping and filling containers. Bettel defines container as "intended to encompass bottles, jars and like receptacles for containing fluent materials. Valyi II teaches a method of placing bottles

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into base cups. Thus, neither reference teaches the element of “flexible, non-self supportive pouches” as is recited in Claim 10.

In addition, Bettle teaches an apparatus that blows, sterilizes, caps and fills bottles. This is achieved by “continuous positive control . . . by gripping the preform about its neck finish by means of a first set of grippers 30, 31 which cooperate with cams and followers to release each preform only after a second set of grippers 32, 33 has gripper the preform about its neck finish NF.” Col. 5, lines 6-12. As is shown in Figures 2, 2A and 3 of Bettle, the grippers control the bottle from the outside surface of the neck finish. However, as the Examiner indicates in the *Office Action*, Bettle does not disclose that the handling system discharges the bottle into a rigid container. Thus, Bettle fails to teach that the handling system is adapted to place the flexible pouch in rigid container and thereafter release the flexible pouch by the neck finish, as is recited by independent Claim 10.

As indicated above, Bettle teaches grippers 30 and 32 which grip the neck finish NF on the outside surface of the container. This allows the container to be blow molded, sterilized, filled and capped while maintaining positive control over the container by the grippers on the outside surface of the neck finish. In contrast, Valyi II teaches that removal plug 41 may engage the bottle by a close fit within the neck of the bottle. Thus, it is unclear how one of ordinary skill in the art would combine the blow molding, sterilizing, filling and capping systems described in Bettle which maintain positive control through grippers around the neck finish with a plug which creates a close fit inside of the neck finish of the bottle prior to placing the article in the base cup. The apparatus described in Bettle caps the bottle. One of ordinary skill in the art would not be able to use the removal plug of Valyi II to engage the bottle and place it in a base cup. Thus, the Examiner’s primary reference Bettle is not properly combinable with Valyi II since Bettle’s intended function of capping the container would be destroyed by the apparatus described by Valyi II.

Accordingly, Applicants respectfully submit that Claim 10 is allowable over the combination of Bettle and Valyi II. Claim 17 depends from Claim 10 and further defines the invention defined in Claim 10. Thus, Claim 17 is also patentably distinguished over Bettle and Valvi II for at least the reasons set forth above with respect to Claim 10, as well as for other novel and nonobvious features recited therein.

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Conclusion

For the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding *Office Action* are inapplicable to the present claims. Any remarks in support of patentability of one claim should not be imputed to any other claim, even if similar terminology is used. Any remarks referring to only a portion of a claim should not be understood to base patentability on solely that portion; rather, patentability must rest on each claim taken as a whole. Applicants do not concede or acquiesce to any of the rejections in the *Office Action*. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

Applicant reserves the right to later contest whether the references teach flexible, non-self supportive pouches.

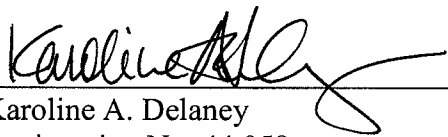
The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicants' attorney in order to resolve such issue promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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Dated: 13 Nov. 2006

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